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UNITED STATES DISTRICT COURT
Middle District of North Carolina

Case Number CR-92-36-01D

United States of America

v.

John Oscar Reives
Defendant

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or
After November 1, 1987)

The defendant, JOHN OSCAR REIVES, was represented by James R. Van Camp.

The defendant was found guilty on count(s) 1 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section 21:846,841(a)(1) & (b)(1)(A); Nature of Offense Conspiracy to distribute cocaine base (crack) a Schedule II narcotic controlled substance; Date Offense Concluded 12/12/91; Count Number(s) 1.

As pronounced on January 19, 1993, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $50.00, for count(s) 1, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 25th day of January, 1993.

/s/ William L. Osteen

United States District Judge

Defendant's SSN: 240-52-9886

Defendant's Date of Birth: 6/8/37

Defendant's mailing address: 331 Church Street, Sanford, NC 27330

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 65 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated in an institution where he can receive appropriate treatment for his severe medical problems.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons on March 1, 1993 by 11:00 a.m.

RETURN

I have executed this Judgment as follows: _____

Defendant delivered on _____ to _____, with a certified copy of this Judgment.

United States Marshal

By: Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below; and shall comply with the following additional conditions:

1. If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

3. The defendant shall not own or possess a firearm or destructive device.

4. The defendant shall participate in a substance abuse treatment program, which may include urinalysis or other forms of testing, as directed by the U.S. Probation Officer.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate

with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by

the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level: 32

Criminal History Category: 1

Imprisonment Range: 121 months to 151 months

Supervised Release Range: to 5 years

Fine Range: $17,500 to $4,000,000

Restitution: $ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): pursuant to 5H1.4 due to defendant's physical condition.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

DURHAM DIVISION

Case Number CR-92-36-01D

United States of America

v.

John Oscar Reives

Defendant

O R D E R

On June 3, 1993, a hearing was held to determine the defendant's ability to report for service of the sentence imposed by this Court on January 19, 1993. The defendant was represented by James Van Camp, Attorney.

For the reasons stated at the hearing mentioned above, IT IS ORDERED that the sixty-five (65) months imprisonment heretofore imposed upon the defendant on January 19, 1993 be reduced, and the

defendant is committed to the custody of the Bureau of Prisons for imprisonment for a period of forty-eight (48) months.

IT IS FURTHER ORDERED that the defendant report to the institution designated by the Bureau of Prisons on January 3, 1994. The United States Marshal may transport the defendant to the designated institution, but it will e the defendant's responsibility to make those arrangements in advance so the defendant will not have to be housed locally.

IT IS FURTHER ORDERED that the United States Marshal procure a transcript of the testimony of Dr. Thomas C. Phillips held on June 3, 1993, by December 1, 1993. This transcript shall be submitted to the Bureau of Prisons for the purpose of determining whether or not they are capable of providing medical attention to this defendant.

IT IS FURTHER ORDERED that the defendant continue to observe the conditions of home detention as a condition of release. The defendant shall not have anyone on the property where he lives that is not related by at least first cousin, unless he first obtains permission from the U.S. Probation Officer. The defendant's girlfriend may reside on the property, but she shall not have anyone on the property that is not related by at least first cousin, unless the defendant first obtains permission from the U.S. Probation Officer. Supervision of this condition is solely the responsibility of the defendant. Violation of this condition or any other condition will result in an accelerated reporting date.

This the 16 day of June, 1993.

/s/ William L. Osteen

United States District Judge

UNITED STATES of America,

Plaintiff-Appellee,

v.

John Oscar REIVES,

Defendant-Appellant.

No. 93-5114

United States Court of Appeals,

Fourth Circuit.

Argued Oct. 29, 1993.

Decided Jan. 19, 1994.

Defendant was convicted in the United States District Court, Middle District of North Carolina, William L. Osteen, Sr., J., of conspiracy to distribute crack cocaine. Defendant appealed. The Court of Appeals, K.K. Hall, Circuit Judge, held that it is not error for trial court to refuse to give definition of "reasonable doubt" even when definition is requested by jury.

Affirmed.

[1] CONSTITUTIONAL LAW k266(7)

92k266(7)

Due process requires proof of every element of crime beyond reasonable doubt, and Sixth Amendment requires that standard be applied by jury. U.S.C.A. Const.Amends. 5, 6, 14.

[1] CRIMINAL LAW k741(1)

110k741(1)

Due process requires proof of every element of crime beyond reasonable doubt, and Sixth Amendment requires that standard be applied by jury. U.S.C.A. Const.Amends. 5, 6, 14.

[2] CRIMINAL LAW k709(1)

110k709(1)

It is nor error for trial court to refuse to give definition of "reasonable doubt" even when definition is requested by jury.

[3] CRIMINAL LAW k863(1)

110k863(1)

If jury seeks further clarification of instruction that merely contains term "reasonable doubt," trial judge should treat such inquiries in like manner as in explaining any other instruction.

ARGUED: James Richard Van Camp, Van Camp, West, Hayes & Meacham, Pinehurst, NC, for Appellant. Harry L. Hobgood, Asst. United States Attorney, Greensboro, NC, for Appellee. ON BRIEF: Michael J. Newman, Van Camp, West, Hayes & Meacham, Pinehurst, NC, for Appellant. Benjamin H. White, Jr., U.S. Atty., Greensboro, NC, for Appellee.

Before HALL, WILKINSON, and LUTTIG, Circuit Judges.

OPINION

Reives appeals his conviction of conspiracy to distribute crack cocaine, in violation of 21 U.S.C. s 846. He raises the single issue of whether it was

reversible error for the trial court to refuse to clarify the term "reasonable doubt" when requested to do so by the jury. We find no error, and we affirm.

I

Reives was convicted on the testimony of two co-conspirators and an undercover policeman; the policeman had not direct dealings with the defendant. Reives proposed the following instruction:

It is nor required that the Prosecution prove guilt beyond all possible doubt. The test is beyond a reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not

hesitate to rely and act upon it in the most important of his own affairs.

The jury will remember that a Defendant is never to be convicted on mere suspicion or conjecture.

In its charge to the jury, the trial court gave this instruction instead:

The government has the burden of proving every defendant in a criminal case guilty beyond a "reasonable doubt." And if it fails to do so, you must find the defendant not guilty. While the Government's burden of proof is a strict, or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the Government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" may arise either from the evidence or from a lack of

evidence As stated earlier, you must consider only the evidence that I have admitted in this case. The term "evidence" includes the testimony of witnesses, and the exhibits admitted into the record.

In the course of the instructions, the court mentioned the term "reasonable doubt" nine other times.

Shortly after the jury had begun deliberations, the foreperson sent the following note to the judge: "We need further clarification as to 'reasonable doubt'." The trial judge told counsel that he believed that the Fourth Circuit rule was that "the trial court should not try to define 'reasonable doubt'," an assessment of the law with which the prosecutor agreed. Defense counsel noted that a jury request for clarification was a different situation than merely giving

the definition "gratuitously." The court denied the jury's request for "further clarification" and merely reread the instruction initially given. The jury reached its verdict the next day.

II

A

[1] Due process requires proof of every element of a crime beyond a reasonable doubt, In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970), and the Sixth Amendment requires that this standard be applied by a jury, Sullivan v. Louisiana, ___ U.S. ____, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993). The Supreme Court recently held that it is per se reversible error to give a reasonable doubt instruction that arguably decreases the government's burden of proof. Id. Reives contends that a wrongly instructed jury's verdict is no

less structurally unsound than a verdict from a jury that is demonstrably uncertain about the burden of proof. We are convinced, however, that Reives proposes to cure where there is no illness, and that the cure may indeed make matters worse.

B

The contours of the overall problem are visible in a Supreme Court case decided almost forty years ago. In Holland v. United States, 348 U.S. 121, 75 S.Ct. 127, 99 L.Ed.150 (1954), the instruction under attack defined "reasonable doubt" as "'the kind of doubt . . . which you folks in the more serious and important affairs of your own lives might be willing to act upon'." Id. at 140, 75 S.Ct. at 137. The Court noted that the "willing to act upon" type of instruction "would seem to create

confusion rather than misapprehension. Attempts to explain the term 'reasonable doubt' do not usually result in making it any clearer to the minds of the jury." Id. (internal quotation omitted). The Court held, however that "taken as a whole, the instructions correctly conveyed the concept of reasonable doubt to the jury." Id. Just a few months ago, in Sullivan, the Court designated a specific "reasonable doubt" instruction as constitutionally deficient. But the Court has offered little guidance on the more general question of whether the term "reasonable doubt" should or even can be explained to juries. It is an issue that has engendered a fair amount of controversy, but little in the way of hard and fast rules for the trial courts.

C

The courts of appeals are divided about if, when, and how the concept of "reasonable doubt" should be defined. See United States v. Nolasco, 926 F.2d 869, 875 n.1[1] (9th Cir.) (en banc) (Wiggins, J. dissenting), cert. denied, ___ U.S. ____, 112 S.Ct. 111, 116 L.Ed.2d 80 (1991); Edward J. Devitt, et al., Federal Jury Practice and Instructions, s. 12.10 (4th ed. 1992); Henry A. Diamond, Note, Reasonable Doubt: To Define, or Not to Define, 90 Colum.L.Rev. 1716, 1718-21 (1990) ("Note").[2] The Fourth and Seventh

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[1] This footnote contains the following alignment among the federal courts of appeal: four circuits agree that failure to define is reversible, four agree that the decision to define should be left to the trail court's discretion, and two (including the Fourth Circuit) leave the decision with the trail court but condemn the use of any definition. The state courts are similarly divided.

[2] This Note cites Murphy v. Holland, 776 F.2d 470 (4th Cir. 1985), vacated on other grounds, 475 U.S. 1138, 106 S.Ct.

Circuits seem to be alone in admonishing trial courts to refrain from attempting any definition. See United States v. Hall, 854 F.2d 1036 (7th Cir. 1988) ("An attempt to define reasonable doubt presents a risk without any real benefit."). Controversies regarding definition of the term generally arise in one of the following three ways, the first two of which we have had occasion to consider in a variety of factual settings: (1) the court refuses to give an instruction requested by the defendant or stipulated by the parties; (2) the court gives a definition on its own or when

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1787, 90 L.Ed.2d. 334 (1986), for the proposition that the Fourth Circuit requires the giving of a definition upon specific request by the jury. See Note at 1719 n. 32. Murphy, however, involved not a jury request but, rather, an argument by a habeas petitioner that a definition should not have been given in his state trial.

requested by the jury or a party; (3) the jury requests clarification or definition, and the court refuses. The case before us falls in this last category.

D

It is difficult to distill a rule from our cases. We have never found a refusal of a party's request for a clarifying instruction to be error. See United States v. Woods, 812 F.2d 1483 (4th Cir. 1987) (defendant's request denied); United States v. Ricks, 882 F.2d 885 (4th Cir. 1989) (same), cert. denied, 493 U.S. 1047, 110 S.Ct. 846, 107 L.Ed.2d 841 (1990). In cases where a defendant has complained about a definition that was given, although we have spoken of "this circuit's rule against elaborating on the meaning of 'reasonable doubt' . . . " (Woods, 812 F.2d at 1487), we usually

examine the instructions as a whole to see whether the reasonable doubt instruction was prejudicially misleading or confusing. See, e.g., United States v. Love, 767 F.2d 1052, 1060 (4th Cir. 1985), cert. denied, 474 U.S. 1081, 106 S.Ct. 848, 88 L.Ed.2d 890 (1986). And although we have sometimes found error in such situations, we have not reversed on this ground alone. See United States v. Moss, 756 F.2d 329, 333 (4th Cir. 1985) (holding the unsolicited giving of the following definition to be harmless error: "proof of such a convincing character that you would be willing to rely upon it without hesitation in your most important affairs of your own" [sic]); Murphy v. Holland, 776 F.2d 470, 475-78 (4th Cir. 1985) (finding harmless error in unsolicited definition), vacated on other grounds, 475 U.S. 1138, 106 S.Ct. 1787, 90 L.Ed.2d 334

(1986); Love, 767 F.2d at 1060 (finding no plain error in unsolicited instruction); but see United States v. Russell, 971 F.2d 1098, 1108 (4th Cir. 1992) (declaring as "frivolous" claim that it was error to give pattern jury instruction "approved" in Moss after request by jury), cert denied, ___ U.S. ____, 113 S.Ct. 1013, 122 L.Ed.2d 161 (1993). It is in this somewhat uncertain atmosphere that we approach for the first time a denial of a jury request.

E

Those courts that favor giving a definition generally cite the following as reasons for their view: (1) the meaning of the term "reasonable doubt" is not self-evident. See Nolasco, 926 F.2d at 873 (Wigging, J. dissenting) ("True, each word in the phrase [beyond a reasonable doubt] occurs regularly in common speech.

However, placed together without further explanation, the words do not necessarily convey the high standard of proof that the due process clause requires."); (2) the term does not convey "the importance and seriousness of the high level of proof demanded by the reasonable doubt standard." Id.; and (3) the term is capable of being clarified. See Note at 1722-26 (citing various jury studies that demonstrate that jurors do not understand the meaning of reasonable doubt). In other words, definition of the term is both necessary (for stress and clarification) and possible. The usual reasons for discouraging definitions of reasonable doubt are that the term has a "self-evident meaning comprehensible to a lay juror" and that attempts at defining the term will probably lead to "unnecessary confusion." Murphy, 776 F.2d

at 475; see also Thompson v. Lynaugh, 821 F.2d 1054, 1061 (5th Cir.) ("[A]ttempts by trial courts to define 'reasonable doubt' have been disfavored by this court. Such attempts often result in using the term itself in the definition and serve only to confuse the concept in the minds of jurors."), cert denied, 483 U.S. 1035, 108 S.Ct. 5, 97 L.Ed.2d 794 (1987); United States v. Olmstead, 832 F.2d 642, 645 (1st Cir. 1987) ("Most efforts at clarification result in further obfuscation of the concept."), cert. denied, 486 U.S. 1009, 108 S.Ct. 1739, 100 L.Ed.2d 202 (1988). Essentially, the reason for not giving a definition is that there is no need to, and, in any event, there is no better way of explaining the concept.

III

While we have consistently and vigorously condemned the attempts of trial

courts to define reasonable doubt, see, e.g., Moss, 756 F.2d at 333, we have hedged a bit and suggested that an exception exists when a jury asks for a definition. See, e.g., Id. at 334 n. 1 (suggesting a specific pattern jury instruction defining reasonable doubt to be used when a jury requests a definition). In Murphy, after "join[ing] in the general condemnation of trial court attempts to define reasonable doubt . . .," we added that it is wisest to avoid a definition "unless specifically requested to do so by the jury." Id. This last observation is made without citation to any authority. Nevertheless, and despite our vigorous disapproval of such instructions in all other situations, we have repeated this "jury-request" exception to the general rule so often that it has virtually achieved the status

of circuit precedent.[3] We reject Reives' invitation to breathe precedential life into this long line of dicta.

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[3] United States v. Porter, 821 F.2d 968, 972 (4th Cir. 1987) ("This court has urged trial courts to avoid defining reasonable doubt unless requested to do so by the jury."), cert denied, 485 U.S. 934, 108 S.Ct. 1108, 99 L.Ed.2d 269 (1988); Ricks, 882 F.2d at 894 n.12 (citing Murphy, speaks of "this limited exception to our general proscription in those cases where jurors are demonstrably confused or uncertain . . ."); Moss, 756 F.2d at 334 n.1 ("But we suggest that whenever a jury request makes an instruction defining reasonable doubt necessary, district courts should accurately replicate the pattern jury instruction used to avoid any unnecessary confusion."); Russell, 971 F.2d at 1108 (referring tot he above quoted language in Ricks as a suggest[ion] that such an instruction should be given when the jury is 'demonstrably confused or uncertain' and requests such an instruction"); United States v. Adkins, 937 F.2d 947, 950 (4th Cir. 1991) ("The only exception to our categorical disdain for definition is when the jury specifically requests it."); United States v. Hedspeth, 852 F.2d 753, 755 (4th Cir.1988) ("We have frequently admonished district courts not to attempt to define reasonable doubt to the jury absent a specific request from the jury itself.")

[2][3] The underlying premise in all of our cases is that trying to explain things will confuse matters, and we cannot see why a jury request should change this premise.[4] If there is a definition that can clarify the meaning of reasonable doubt, common sense suggests that such a definition be offered to all juries, even those that do not venture a request. But until we find a definition that so captures the meaning of "reasonable doubt" that we would mandate its use in all criminal trials in this circuit, we cannot hold that it is error to refuse to give some definition. We note that Sullivan has increased the stakes where definitions

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[4] There may be times when a jury seeks further clarification of an instruction that merely contains the term "reasonable doubt." In such a situation, the trial judge should treat such inquiries in like manner as in explaining any other instruction.

are concerned, and we reaffirm our longstanding, albeit forgiving, proscription against any attempts to define reasonable doubt to jurors.

AFFIRMED.

United States v. Reives, 15 F.3d 42-46.